

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 07-0031**  
**Sales and Use Tax**  
**For The Tax Period 2003 - 2005**

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**ISSUES**

**I.     Sales and Use Tax – Imposition of Use Tax on Materials and Supplies.**

**Authority:**   IC § 6-8.1-5-1(c); IC § 6-2.5-2-1; IC § 6-2.5-3-2(a); IC § 6-2.5-6-13.

The Taxpayer protests the imposition of use tax on materials and supplies.

**II.    Sales and Use Tax – Gross Receipts Subject to Sales Tax.**

**Authority:**   IC § 6-8.1-5-1(c).

The Taxpayer protests the inclusion of additional gross receipts subject to sales tax.

**III.   Sales and Use Tax – Duplicate Assessments of Sales and Use Tax**

**Authority:**   IC § 6-8.1-5-1(c).

The Taxpayer protests duplicate assessments of sales and use tax.

**IV.    Sales and Use Tax – Imposition of Use Tax on Computer Software.**

**Authority:**   IC § 6-2.5-3-2(a); IC § 6-8.1-5-1(c).

The Taxpayer protests the imposition of use tax on computer software.

**V.   Tax Administration - Ten Percent Negligence Penalty.**

**Authority:** IC § 6-8.1-10-2.1; 45 IAC 15-11-2(b).

The Taxpayer protests the imposition of the ten percent negligence penalty.

## **STATEMENT OF FACTS**

The Taxpayer is a corporation which operates an automotive body repair shop, a towing service, and a storage facility. After an audit for the years 2003 – 2005, the Indiana Department of Revenue (Department) assessed additional sales tax, use tax, interest, and penalty. The audit also revealed that the Taxpayer was entitled to credit for sales tax paid on paint materials purchased for resale and sales tax paid on oil used in the wrecker and trucks in the towing service. The Taxpayer protested the assessments of sales tax, use tax, and penalty. A hearing was held and this Letter of Findings results.

### **I. Sales and Use Tax** – Imposition of Use Tax on Materials and Supplies.

#### **DISCUSSION**

The Taxpayer was in the business of repairing damaged motor vehicles. In performing these repairs, the Taxpayer used many consumable items such as tools, sand pads, masking tape, pumice, and gloves. The Department assessed use tax on the Taxpayer's consumption of these items. The Taxpayer protested this assessment. The Taxpayer included the taxed consumable supplies as materials on the invoices pursuant to insurance industry rules. As invoiced materials, the Taxpayer collected and remitted sales tax on the consumable supplies on which the Department assessed use tax. The Taxpayer argued that since sales tax was collected and remitted on these items, the Department should not assess use tax on the consumable supplies.

Tax assessments are presumed to be valid. IC § 6-8.1-5-1(c). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id.*

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC § 6-2.5-2-1. Indiana imposes a complementary excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. IC § 6-2.5-3-2(a).

The shop supplies were consumed in the provision of a service, the repair of damaged vehicles. The shop supplies were not sold to the customers in a retail transaction. The Taxpayer was the final user of the shop supplies. Therefore, the Department properly imposed use tax on the Taxpayer's use of the shop supplies.

The Taxpayer protested that it should not have to pay sales tax twice. The Taxpayer is not being assessed sales tax twice. The Taxpayer billed its customer's sales tax on the consumable supplies in error. The customers have the right to claim a refund of the sales taxes improperly paid. IC § 6-2.5-6-13. The Department properly imposed use tax on the consumable supplies which the Taxpayer used in repairing vehicles.

## **FINDING**

The Taxpayer's protest is respectfully denied.

### **II. Sales and Use Tax – Gross Receipts Subject to Sales Tax.**

## **DISCUSSION**

The Taxpayer's 2003 sales journals indicated that the Taxpayer did not report all its sales of tangible personal property on its 2003 sales tax returns. The Department assessed sales tax on these unreported sales. The Taxpayer protested the assessment. The Taxpayer is a fiscal year filer with an end date of June 30 for income tax purposes. The Taxpayer explained that a bookkeeper who had been employed for a short period during 2002 sabotaged the Taxpayer's computerized records. As a result of the corruption of the computerized records, the Taxpayer did not know if the June 30, 2002, year end was closed. The Taxpayer, therefore, did not know its correct beginning account balances for calendar year 2003. The Taxpayer found the first quarter end trial balance for the fiscal year ending June 30, 2003. This balance had been created by the terminated bookkeeper. Although the Taxpayer was not certain of the accuracy of these account balances, the Taxpayer used this trial balance as a starting point for the 2003 sales journals. This roll-over of the trial balance essentially added 2002 sales into the 2003 sales journals. These 2002 sales in the 2003 sales journals were the additional sales on which sales tax was not collected and remitted to the state according to the Taxpayer.

Although the Taxpayer submitted a graph showing a spike in gross sales for the year 2003 and a June 30, 2005, Standard Trial Balance, the Taxpayer did not offer any documentary evidence to substantiate its argument that the sales journals for 2003 were inaccurate. Neither did the Taxpayer offer any documentary evidence to support any specific adjustment in the 2003 sales journals' account balances. The Taxpayer did not sustain its burden of proving that the Department's assessment was incorrect as required by IC § 6-8.1-5-1(c).

## **FINDING**

The Taxpayer's protest is respectfully denied.

### **III. Sales and Use Tax – Duplicate Assessments of Sales and Use Tax.**

## **DISCUSSION**

The Taxpayer contended that in a variety of instances, the Department assessed sales or use tax when the appropriate tax had already been properly paid. The Taxpayer was unable to provide any documentation to substantiate this argument. Therefore, the Taxpayer did not sustain its burden of proving that the assessment was incorrect as required by IC § 6-8.1-5-1(c).

### **FINDING**

The Taxpayer's protest is respectfully denied.

#### **IV. Sales and Use Tax – Imposition of Use Tax on Computer Software.**

### **DISCUSSION**

The Department assessed use tax on the Taxpayer's use of several purchases of computer software and updates pursuant to IC § 6-2.5-3-2(a). The Taxpayer argued that since it paid sales tax at the time of the purchase of these computer software programs and updates, the use tax was improperly imposed. The Taxpayer was unable to provide any documentation to substantiate that it had actually paid sales tax at the time of purchase of the computer software and updates. Therefore, the Taxpayer did not sustain its burden of proving that the assessment was incorrect as required by IC § 6-8.1-5-1(c).

### **FINDING**

The Taxpayer's protest is respectfully denied.

#### **V. Tax Administration - Ten Percent Negligence Penalty.**

### **DISCUSSION**

The Taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Taxpayer's records were not in good order. The Taxpayer did not maintain adequate documentation to support its contention that its failure to pay the assessed tax was due to reasonable cause rather than negligence.

**FINDING**

The Taxpayer's protest to the imposition of the penalty is denied.

KMA/LS/DK-September 11, 2007